IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No. 527 of 2005

Date of Decision: November 2, 2006

Mushtaq Ahmed

…..Petitioner

Vs.

State of Haryana and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR.

HON'BLE MR. JUSTICE M.M.S. BEDI.

Present:- Mr. Roopak Bansal, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana,

Mr. Rajesh Mahajan, Advocate

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M.M. KUMAR. J. (ORAL)

The prayer made by the petitioner in this petition filed under Article 226 of the Constitution is to quash suspension order dated December 29, 1995 (P-3) and subsequent dismissal order dated November 3, 2001 (P-5). A further prayer has been made for quashing order dated April 26, 2004

(P-8) passed by respondent No.4 rejecting the claim of the petitioner for reinstatement in service with all consequential benefits. The petitioner has also sought direction to the respondents to reinstate him in service with continuity and with all service benefits including full back wages w.e.f. December 29, 1995, pay fixation, seniority etc. alongwith interest.

It is undisputed that the petitioner was placed under suspension on December 29, 1995 (P-3) on the ground that an FIR No. 160 dated August 27, 1993, under Sections 406/ 420 IPC registered at Police Station Nuh. In a departmental enquiry held by the respondent School, the petitioner was exonerated of the charges levelled against him. The Judicial Magistrate in the police case found the petitioner guilty under Section 420 read with Section 471 IPC vide order dated September 19, 2001 (P-4). Consequently, the petitioner was dismissed from service on the basis of conviction (P-5). However, his conviction was set aside, on appeal, by the Sessions Judge, Gurgaon on November 12, 2002 (P-6). Therefore, the claim made by the petitioner in the instant petition is that his suspension order be set aside and he be reinstated in service alongwith all consequential benefits.

When the case came up for consideration on September 12, 2006, we have passed the following orders:-

> "After hearing the arguments at some length and the stand taken by the respondents disclosing that the petitioner has withdrawn the Contributory Provident Fund from his account on 8.1.2003, we find that prima

facie this cannot be a ground for denying reinstatement of the petitioner in service after his acquittal on 12.11.2002.

Respondent No.2 through Mr. Mahajan is directed to reconsider the case of the petitioner for reinstatement in service without taking the aforementioned ground as an excuse.

List again on 26.9.2006.

Copy of the order be given to Mr. Mahajan under the signatures of Bench Secretary."

Mr. Rajesh Mahajan, learned counsel for respondents No.2 to 4 after obtaining instructions has stated that the petitioner can be taken back in service provided he agrees to forego back wages and deposit the Contributory Provident Fund alongwith interest which he has withdrawn on January 8, 2003. He further states that till October 13, 2001, when the petitioner was dismissed, he has withdrawn 50% of the wages as suspension allowance which should also be forfeited and no benefit of the unpaid salary for the suspension period could be granted.

Mr. Roopak Bansal, learned counsel for the petitioner is prepared to forego 50% of the back wages and is also ready to deposit back the Contributory Provident Fund alongwith interest which he has withdrawn on January 8, 2003.

After hearing the learned counsel for the parties, we are of the view that in law, the petitioner is entitled to be reinstated in service as he

has been found innocent by the criminal Court. Even departmental enquiry held against him exonerated him of any charge, as is evident from the enquiry report dated May 23, 1994 (P-2).

In view of the above, the writ petition is allowed. The order of dismissal dated November 3, 2001 (P-5) and order of suspension dated December 29, 1995 (P-3) are hereby quashed. However, we restrict the back wages from the date of suspension till the date of reinstatement to 50% as per the statement made by the counsel for the petitioner.

(M.M.KUMAR)
JUDGE

November 2, 2006
sanjay

(M.M.S.BEDI)
JUDGE